IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 265 of 2004
In
COMPANY APPLICATION No. 433 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JASUBHAI MATERIAL HONDLING SYSTEMS PRIVATE LIMITED - Petitioner(s)
Versus
.. - Respondent(s)

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Appearance :
SINGHI & CO for Petitioner No(s).: 1.
MR JITENDRA MALKAN for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE K.A.PUJ

Date : 06/07/2005

ORAL JUDGMENT

1. The present Company Petition is filed for sanctioning the arrangement embodied in the Scheme of Amalgamation of Jasubhai Material Handling Systems Private Limited (Transferor Company) with Jasubhai Engineering Private Limited (Transferee Company), whereby the Undertaking (as defined in the Scheme) of the Transferor Company shall stand transferred and vested in the Transferee Company on the terms and conditions as stated in the Scheme of Amalgamation. I have heard Mr. Sandeep Singhi, advocate appearing for the petitioner. I have considered the contents of the petition and the totality reflected from the annexures annexed with the petition.

2. Earlier, by order dated 22.12.2004 in Company Application No. 433 of 2004 preferred by the petitioner Company i.e. the Transferor Company for sanctioning the Scheme of Amalgamation, this Court

dispensed with the meeting of Equity Shareholders for the purpose of considering, and if thought fit, approving, with or without modifications, the said Scheme of Arrangement as the Equity Shareholders of the petitioner Company had given their consent to the proposed Scheme. This Court in the said order dispensed with the meeting of the Secured Creditors and Unsecured Creditors of the petitioner Company, in the light of the fact that the rights and interest of the Secured and Unsecured Creditors of the petitioner Company are not affected in any manner as no compromise is offered to the Secured and Unsecured Creditors of the petitioner Company and neither any liability of the Secured and Unsecured Creditors under the Scheme is being reduced or extinguished. This Court, in the said order, observed that there is an excess of assets over liabilities in the case of the petitioner Company.

3. By order dated 29.12.2004, the present petition was admitted and notices were issued to the

Central Government through Regional Director, Department of Company Affairs and to the Official Liquidator. The notices were also ordered to be published in two newspapers. Pursuant to the same, an affidavit of one Mr. Ketan Shah, Authorised Signatory of the petitioner Company, dated 24.01.2005 has been filed confirming the publication of the notice in two newspapers as directed and service of notice to the Regional Director and the Official Liquidator.

4. The letter dated 22.06.2005 addressed by the Regional Director, Mumbai, to the Registrar of Companies, Gujarat is placed on record by Mr. J.M. Malkan, the Assistant Solicitor General. In the letter dated 22.06.2005, it is stated by the Regional Director that the said Scheme has been examined by the Directorate and it has been decided not to oppose the said Scheme.

5. The Official Liquidator has also placed its report

wherein it is stated that the Chartered Accountant appointed for the purpose of scrutinizing and investigating books of accounts and the affairs of the petitioner Company have submitted its report concluding that on the basis of the information received by them and based upon the examination of records and books produced before them, they are of the opinion that the affairs of the Company have not been conducted in a manner prejudicial to the interest of public.

6. Therefore, in view of the above considerations, I hold that there are no grounds or circumstances to refuse to grant approval. On going through the Scheme, it appears that the requirement of the provisions of Section 391 to 394 of the Companies Act, 1956 are satisfied and there appears to be cogent grounds for accepting the Scheme which is proposed. The Scheme is genuine and bonafide and in the interest of Shareholders and Creditors of the petitioner Company. I therefore accordingly

allow this petition and I approve the arrangement embodied in the Scheme of Amalgamation. Reliefs in terms of para 19 (a) and (b) in Company Petition No. 265 of 2004 are hereby granted.

7. The fees of Learned Assistant Solicitor General of India is quantified at Rs. 3,500/- to be paid by the petitioner Company.

8. The Company petition shall stand disposed off accordingly.

[K.A. PUJ, J.]

Savariya